

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

DAVID CHERRY, Personal Representative)
of the ESTATE OF PAMELA CHERRY,)
DECEASED,)

Plaintiff,)

vs.)

CASE NO. 2:12-cv-00043

MACON HOSPITAL, INC. d/b/a MACON)
COUNTY GENERAL HOSPITAL,)
HANNA C. ILIA, M.D., JAMES BARLOW,))
JIMMY PHILPOTT, TOWN OF CELINA,)
TENNESSEE, and CLAY COUNTY E911)
BOARD,)

Defendants.)

PLAINTIFF, DAVID CHERRY, PERSONAL REPRESENTATIVE OF THE
ESTATE OF PAMELA CHERRY, DECEASED'S, RESPONSE TO
DEFENDANTS JAMES BARLOW AND JIMMY PHILPOTTS'
MOTION FOR SUMMARY JUDGMENT

Plaintiff, David Cherry, Personal Representative of the Estate of Pamela Cherry, Deceased, respectfully submits his Response to Defendants James Barlow and Jimmy Philpotts' Motion for Summary Judgment. After careful review, Plaintiff must acknowledge in good faith that he cannot provide facts or authority that support the assertion that Mr. Barlow's and Mr. Philpotts' conduct, even if grossly negligent, rose to the level of willful, malicious, or criminal, or that the conduct was performed for personal financial gain as required by Tennessee Code Annotated § 29-20-310(c). *See also Hill v. Germantown*, 31 S.W.3d 234 (Tenn. 2010). Accordingly, Plaintiff agrees that James Barlow and Jimmy Philpott are entitled to total personal immunity and would consent to this Court issuing an Order so finding and dismissing James

Barlow and Jimmy Philpott from this case with prejudice. Plaintiff, however, continues to assert his claims against the Town of Celina, Tennessee, which has not moved for summary judgment.

Respectfully submitted,

WILSON KEHOE WININGHAM LLC

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2014, I electronically filed the foregoing with the Clerk of the Court using the EM/ECF system which sent notification of such filing to the following:

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